

Application Number 10/696,494  
Amendment dated August 4, 2006  
Responsive to Office Action mailed May 4, 2006

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REMARKS

This Amendment is responsive to the Office Action dated May 4, 2006. Applicant has amended claims 1, 17, 19 and 34. Claims 1-48 are pending.

Claim Rejection Under 35 U.S.C. § 102

The Office Action rejected claims 1-8, 15, 17-26, 32, 34, and 35 under 35 U.S.C. § 102(b) as being anticipated by US 2001/0007950 by North et al. (North). Applicant respectfully traverses the rejection to the extent such rejection may be considered applicable to the amended claims. North fails to disclose each and every feature of the claimed invention, as required by 35 U.S.C. § 102(b).

For example, North fails to disclose a remotely located server that directs the programming device to control the implantable neurostimulator to deliver neurostimulation according to a plurality of programs during the programming session, as required by Applicant's claim 1. North describes using a server to obtain value added services or software updates, or receive patient data and implant information. Paragraphs [0037] and [0067]. North does not mention using the server to control an implantable neurostimulator to deliver neurostimulation according to a plurality of programs during the programming session. Accordingly, North does not disclose all of the requirements of independent claim 1, or all of the similar requirements of independent claims 19 and 34, as required for a rejection under section 102.

As another example, with regard to these elements of claim 3, North '50 fails to disclose a server that randomly orders the programs and directs the programming device to control the implantable neurostimulator to deliver neurostimulation according to the random ordering of the programs. The Office Action stated that North teaches the requirements of claim 3 in paragraph [0205]. However, this passage of North describes, "[the] presentation of a sequence of stimulation settings under computer control for determination of various amplitude thresholds, stimulation regions, and patient ratings." Paragraph [0204] of North indicates that the computer described in paragraph [0205] is the local, patient interactive computer. North makes no mention of a remote server that randomly orders the programs and directs the programming device, as recited in Applicant's claim 3, and instead describes a patient interactive computer that controls the presentation of a sequence of stimulation settings. Accordingly, North does not disclose all

Application Number 10/696,494  
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of the requirements of claim 3, or all of the similar requirements of claims 21 and 36, as required for a rejection under section 102.

As another example, Applicant's claim 5 requires the remote server of claim 1 to receive input from at least one of the patient and the clinician via the programming device indicating an area of pain perceived by the patient, receive an input from at least one of the patient and the clinician via the programming device for each of the programs that indicates an area of paresthesia experienced by the patient during delivery of neurostimulation according to the respective program, compare the area of paresthesia for each of the programs to the area of pain to determine an amount of overlap for each of the programs, and present the amounts of overlap for each of the programs to the clinician as rating information. North does not indicate that the server described therein compares the area of paresthesia for each of the programs to the area of pain to determine an amount of overlap for each of the programs or present the amounts of overlap for each of the programs to the clinician as rating information.

Instead, North describes, "software stored in the patient interactive computer to operate the system for data collection, data processing, and optimization of stimulation settings for a particular patient and his/her problem." Paragraph [0026]. Additionally, in reference to the graphical outlines of the areas of pain and paresthesia, North states, "the interior regions of graphical outlines may later be compared by the [patient interactive] computer as part of the analysis to determine preferred stimulation settings." Paragraph [0032]. North describes using a patient interactive computer to compare the area of paresthesia to the area of pain to determine an amount of overlap, rather than a remote server. Accordingly, North does not disclose all of the requirements of claim 5, or all of the similar requirements of claims 23 and 38, as required for a rejection under section 102.

Similarly, North does not disclose a remote server that receives information from a programming device via the network that describes regions of body templates identified, and compares the regions to determine the amounts of overlap, as required by Applicant's claim 6, or the similar requirements of claims 24 and 39.

North fails to disclose each and every limitation set forth in claims 1-8, 15, 17-26, 32, 34 and 35. For at least this reasons, the Office Action has failed to establish a *prima facie* case for anticipation of these claims under 35 U.S.C. 102(b). Withdrawal of these rejections is requested.

Application Number 10/696,494  
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### Claim Rejection Under 35 U.S.C. § 103

In the Office Action, the Examiner rejected claims 9, 36-41, and 47 under 35 U.S.C. § 103(a) as being unpatentable over North, and rejected claim 10 under 35 U.S.C. § 103(a) as being unpatentable over North<sup>1</sup> in view of US 6,250,309 to Krichen et al. (Krichen).

Applicant respectfully traverses the rejections to the extent such rejections may be considered applicable to the claims as amended. The applied references fail to disclose or suggest the inventions defined by Applicant's claims, and provide no teaching that would have suggested the desirability of modification to arrive at the claimed invention.

As discussed above, North fails to disclose the requirements of Applicant's independent claims as amended. Furthermore, Krichen lack any disclosure sufficient to overcome the basic deficiencies of North with respect to the requirements of Applicant's independent claims. Therefore, claims 9, 10, 36-41 and 47 are also in condition for allowance.

For at least these reasons, the Examiner has failed to establish a *prima facie* case for non-patentability of Applicant's claims 9, 10, 36-41 and 47 under 35 U.S.C. § 103(a). Withdrawal of this rejection is requested.

### Allowable Subject Matter

In the Office Action, the Examiner objected to claims 11-14, 16, 28-31, 33, 42-46, and 48 as originally filed based on their dependence on a rejected claim, but indicated that these originally filed claims included subject matter that would be allowable if rewritten in independent form. Applicant appreciates the indication of allowability for claims 11-14, 16, 28-31, 33, 42-46, and 48 as originally filed, but believes that the independent claims as amended are allowable over the cited references.

<sup>1</sup> The rejection was actually over US 6,654,642 to North et al. Applicant notes that US 2001/0007950, cited in the section 102 rejection, is the prior publication of US 6,654,642. Applicant refers to both references as "North."

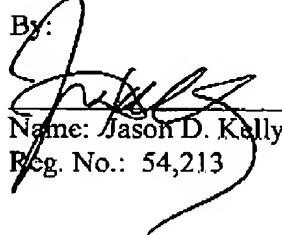
Application Number 10/696,494  
Amendment dated August 4, 2006  
Responsive to Office Action mailed May 4, 2006

### CONCLUSION

All claims in this application are in condition for allowance. Applicant respectfully requests reconsideration and prompt allowance of all pending claims. Please charge any additional fees or credit any overpayment to deposit account number 50-1778. The Examiner is invited to telephone the below-signed attorney to discuss this application.

Date: August 4, 2006

By:

  
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